Headscarf Laws in Europe: Legal necessity or Human Rights Violation?

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EUROPE AND THE HEADSCARF LAW:
LEGAL NECESSITY OR HUMAN RIGHTS VIOLATION

by
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ABSTRACT

This thesis examines the controversy over a recent law in France that bans Muslim headscarves from French public schools and colleges, and analyzes the contradiction between apparent human rights violations of the ban and the laws' alleged necessity through an examination of European human rights law and social, economic, and political statistics. On a legal level, this thesis finds that 'headscarf' bans in Europe violate human rights protections, but that the European Court of Human Rights upholds such violations under a necessity exception. This defense for French-style laws could be challenged at the European Court of Justice by applying a stricter definition of 'race' under the 1976 UK Race Relations Act. However, in the absence of such a legal challenge, this thesis studied social, economic, and political factors in the EU-15 to determine if a French-style law was necessary. Data from this analysis revealed that countries with headscarf laws including France, Belgium, and Germany, had higher levels of unemployment, Muslim immigration, violent crime, racial/religious tension, and support for far-right EU Parliamentarians than the remaining twelve countries in the EU-15. This paper concludes that these relative differences were substantial, and that headscarf laws were a reaction to greater difficulties integrating Muslim populations into the societies of certain countries. The laws themselves appeared to be both a genuine effort to reduce discrimination and prejudice, and ways to create systemic prejudice and discrimination to favor the majority population. Because the laws were partly negatively biased towards Muslim women and children, this thesis argues that a legal challenge at the EUJ is possible and that these laws may violate human rights protections in EU treaties. This thesis cautions policymakers to consider policy alternatives to headscarf bans, and to look to British human rights law as a progressive alternative European model for multicultural integration.
ACKNOWLEDGMENTS

The idea for this Thesis began with one and a half years of coursework in international law, human rights, and the EU with several inspirational professors at Seton Hall University. The thesis author first brought these interests together in a project for a Master's Research Project course with Professor Gokcekus in the Fall 2004 semester at Seton Hall University. The literature survey and qualitative analysis of French and European human rights law in this Thesis were initiated in this course. As a result, the first half of this Thesis is a shortened version of this project, while the second qualitative portion of this thesis is entirely new research.

As an author of in depth research projects works in isolation, I have several people to thank whose help was critical to my success. I would like to thank my Advisor and mentor, Professor Gokcekus who refined my analytical skills, and committed considerable time for private meetings, and enthusiastically and patiently supported me through all stages of this Thesis. I would also like to thank my Second Reader, Professor Pushovski, who helped me develop a critical eye about European affairs and who offered unsolicited advice throughout the project. Considerable thanks also go to classmates in my Master's Research Project whose constructive feedback allowed me to continue this project with confidence.

Finally, I would like to thank my wife, my family, and the many professors I have studied with at Seton Hall University. My wife and family's emotional support have helped give me the strength to work and attend school at the same time throughout this project. The several professors who I have worked with at Seton Hall University have been a constant source of inspiration, and I am thankful for the tremendous practical and academic experiences I have had at the John C. Whitehead School of Diplomacy and International Relations.
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CHAPTER ONE
INTRODUCTION

Since 2 September 2, 2004 ban on "conspicuous" religious symbols in French state schools in almost all provinces of France, the Muslim headscarf or hijab has been the center of a legal controversy both inside and outside of France. In the Human Development Report 2004 published by the UNDP, 69% of the French public supported the ban, but the French-Muslim community was almost equally divided for and against the ban. In a recent BBC News Online poll, 44% of respondents from around the world opposed the ban. Opposition to the ban has taken on even greater significance with Germany and other EU states passing or considering similar bans, and several related court cases in Germany, Britain, and Denmark, and at the European Court of Human Rights (ECHR). In France alone, there have been large-scale public demonstrations, a kidnapping, and terrorist threats in response to the law. Despite strong
internal and external opposition to the law, the French government broadly supported the law’s passage,\textsuperscript{10} and public schools and universities have been expelling students who violate the law.\textsuperscript{11}

President Chirac and other French policy makers believe the new law promotes the long-term French aim of equality through secularism, and does not constitute a policy of racial discrimination. They believe the law will guarantee cultural and gender equality in schools, and help contribute to national security interests by reducing violence and countering Islamic extremism.\textsuperscript{12} In contrast, detractors argue that the law specifically targets Muslim communities because, with the exception of the Sikh turban, the Muslim headscarf or hijab is the most conspicuous religious symbol. Detractors further argue that the ban institutionalizes racist attitudes towards Muslims and curtails the human rights of Muslim girls and women. In this view, the ban will exacerbate racial and political tensions in France by encouraging non-integration, and potentially leading to increased terrorism.\textsuperscript{13}

The ban, more formally known as the loi sur la laïcité or the law on secularism,\textsuperscript{14} builds on a gradual development of laws separating the French church and state,\textsuperscript{15} and it is also a reaction to problems of ongoing racially motivated violence.\textsuperscript{16} France’s current social climate includes high levels of violence, vandalism, and threats directed at Jewish and Muslim communities and their


\textsuperscript{12} See Note 1.


\textsuperscript{18} Justin Vaissé, March 2004.
places of worship and burial. The France 2003 Country Report on Human Rights Practices released by the US Department of State of the Ministry of Interior reported “463 anti-Semitic threats and 125 anti-Semitic attacks during the year, and 737 threats and 195 attacks in 2002.” Although President Chirac publicly condemned “acts of racism and anti-Semitism” in a press statement on July 9, 2004, he himself was condemned for earlier commenting at a public forum on December 6, 2003 that France “could not tolerate ostentatious signs of religious proselytism” and that “Wearing a veil... is a sort of aggression that is difficult for us to accept.” According to a March 2005 report by the International Helsinki Federation for Human Rights (IHF) titled, Intolerance and Discrimination Against Muslims in the EU, intolerance and discrimination against European Muslim communities are pervasive problems in at least eleven of the EU-15 states particularly since 2001.

Although the loi sur la laïcité formally prohibits wearing any conspicuous religious objects in public schools, Chirac’s words and the claims in the IHF report raise questions about the law’s true intentions. Whether the French law is truly a means of maintaining secularism, and religious and cultural equality, or it is a means to cover up French cultural protectionism, anti-immigration sentiment, or “Islamophobes,” the current controversy over the loi sur la laïcité suggests that the law may violate European human rights law.

This study investigates the legality of the loi sur la laïcité and the broader implications of having this type of law in other EU member states through legal and quantitative stages of analysis. Chapter 2 reviews the legal basis and potential legal violations of the French law.

through a qualitative literature survey of European human rights law, and concludes that the French law can only be justified if it can be proven to be necessary. Chapter 3 describes examines social, economic, and political factors and perceptions in the EU-15 to determine differences between the countries and whether these differences support the passage of headscarf bans in France, Belgium, and Germany. In the Conclusion, Chapter 5, this research assesses the legality of French style headscarf laws, the appropriateness of these laws, and their overall implications on European human rights, and concludes that such laws may be in violation of EU human rights treaties because the laws may intentionally reflect widespread prejudice and discrimination towards Muslim people in France, Belgium, and Germany.

CHAPTER TWO
LEGAL BASIS

Opinion papers by Justin Vaisse21 and a February 27, 2004 Human Rights Watch (HRW) article on French human rights22 on the loi sur la laïcité provide important legal arguments for and against the ban. The paper by Vaisse states that in certain cases it is necessary to limit religious freedoms to ensure security and consequently greater civil liberties. The HRW article, on the other hand, asserts that limiting religious freedoms promotes greater security problems and consequently diminished civil liberties.23 This section assesses these conflicting claims focusing on France through a review of French law, European human rights law, and case law of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ).

2.1 The French Secularity Law and French Law

The following four French legal documents provide a general overview of the legal history of the separation of church and state in France, and help explain the legal principles and underlying justification for the loi sur la laïcité,24 and the legality of the law under European law: (1) the Declaration of the Rights of Man and the Citizen of August 26, 1789, (2) the Law of December 9, 1905 relating to the Separation of Church and State, (3) the French Constitution of 1946, and (4) the French Constitution of 1958.25 Each of these documents prescribes both freedoms and limitations of human rights. Since August 26, 1789, French human rights have been enshrined in the Declaration of the Rights of Man and the Citizen, along with early legal concepts of equal

23 Ibid.
25 Ibid.
rights, and public good. Article 1 of the Declaration affirms equal rights, with the prescribed limitation that social distinctions or inequality between people may exist if they are for "the public good." In Article 4, the Declaration says, "Liberty consists in the freedom to do everything which injures no one else..." Finally, Article 5 asserts, "Law can only prohibit such actions as are hurtful to society." If banning headscarves from public schools is a legally imposed social distinction or inequality made to limit the exercise of religious freedom for the public good, this early Declaration provides some legal justification for the loi sur la laïcité.

The Law of December 9, 1905 relating to the Separation of Church and State provides further legal justification for the new French secularism law. It states in Article 1 that the freedom of worship can be restricted to maintain public order. If the wearing of headscarves causes public disorder, then the loi sur la laïcité is consistent with the Law of 1905. In Article 2, the Law emphasizes the idea of secularism in public schools by stating that to preserve the freedom of worship in public schools and colleges, the government does not subsidize worship. Article 2 justifies the current ban because, under French law, widespread religious practice in public schools may turn public schools into de facto places of worship. Article 28 provides an important foundation of the loi sur la laïcité by prohibiting the posting of religious symbols on public monuments or in public sites with the exception of places of worship and cemeteries. The logical legal extension of the Article 28 ban is the loi sur la laïcité ban on wearing conspicuous religious symbols in public buildings such as public schools and colleges.

possesses sacred and inalienable rights." Article 3 of the Preamble further declares women equal to men. Despite these affirmations of human rights, Article 13 of the Preamble guarantees equal access to public secular education. That is, if the educational environment in a French public school or college is in any manner religious, the French government may argue that it has a constitutional duty to curtail religious freedom and gender equality (in the case of girls and women wearing headscarves) to ensure a secular educational environment in its public schools and colleges. From Article 13 of the 1946 Constitution, it follows that the loi sur la laïcité may be warranted to assure that the state's obligation to provide educational secularity is met regardless of whether this is done at the expense of certain human rights and freedoms.

Article 1 of the more recent French Constitution of October 4, 1958, affirms the principle of secularity set out in the Law of 1905 and the Preamble to the 1946 Constitution by declaring France a secular nation. At the same time, Article 1 emphasizes the equal rights of citizens "without distinction of origin, race or religion." Here the principle of secularity as it is applied in the loi sur la laïcité appears to contradict the principle of the equal rights of the citizen because in order to preserve secularity it is necessary to curtail religious rights, gender equality, freedom of expression, the rights of the child, and equal access to education. The underlying justification for the secularity principle is one articulated by proponents of the loi sur la laïcité. They argue that applying the principle of secularity through a ban on headscarves or other conspicuous religious objects from public schools and colleges is necessary to guarantee a higher level of educational equality than there would be without such a law.

2.2 Two Views on the French Secularity Law

The *loi sur la laïcité* appears consistent with developments in French law with respect to religious and educational freedoms and limitations, and the need to preserve principles of secularity, the common good, and equality. Proponents of the *loi sur la laïcité* may claim this legal consistency is a mandate to curb specific areas of human rights under particular cultural, social, or political conditions. Finally, from this perspective such limits will ensure broader equality and public security. To this end, scholar Justin Vaisse maintains that the *loi sur la laïcité* is legally defensible because France is “challenged by militant, radical Islam on its own soil.” He offers that this justifies “…a balance…between religious freedom and public order.” In other words, the need for greater security in France is good reason to reduce some religious freedoms. Vaisse’s second justification for the law is that the law will make certain that “no one feels excluded.” He says that of the 5 million Muslims in France, some of these families force their girls to wear headscarves to school and forbid them to attend biology classes, or participate in physical education. He reasons that: “…it is sometimes necessary to restrict civil liberties in…schools to ensure an atmosphere free of intimidation.” In this view, banning headscarves could protect girls from ‘intimidation’ from their families and bullying from other students. From Vaisse’s perspective, the *loi sur la laïcité* will reduce French religious freedoms to prevent or eliminate existing or potential factors that will reduce human rights more markedly than would be the case in the absence of such a law. Conversely, in the absence of this law there would be a greater number and perhaps intensity of racial attacks, unfair limits on the freedoms of Muslim girls, exclusion, and even terrorism than there would be with this law.


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30 Justin Vaisse, March 2004
women’s rights, and the rights of children, and for causing potential problems of public disorder. According to the HRW paper:

... states can only limit religious practices when there is a compelling public safety reason, when the manifestation of religious beliefs would impinge on the rights of others, or when it serves a legitimate educational function (such as prohibiting practices that preclude student-teacher interaction). The article maintains that common religious symbols such as the headscarf, do not cause public safety problems, inhibit the rights of others, or disrupt the educational system. Further, in this view secularism at schools is actually strengthened by protecting religious freedoms because “... it demonstrates respect for religious diversity, a position fully consistent with maintaining the strict separation of public institutions from...” religion. The HRW paper claims that the law discriminates against girls, and that some Muslim families may have to remove their children from state schools. Finally, the HRW paper argues that some French may use the law to express “anti-immigration and anti-Muslim sentiments.” This claim may have some validity given Chirac’s idea of the veil as a “sort of aggression.” If the HRW paper’s claims are true, the loi sur la laïcité will promote segregation, racism, and overall diminished human rights and secularity, while the absence of such a law will promote integration, respect for religious diversity, and improved human rights and separation of public institutions and religion.

33 Ibid.
34 Ibid.
2.3 The French Secularity Law and European Human Rights Documents

An initial step in resolving the conflict between these two schools of thought on human rights is to apply the French law to European human rights law. This section will briefly consider the following main documents of European human rights:35

Table I. Main Documentary Sources of European Human Rights Law

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<th>United Nations</th>
<th>Council of Europe</th>
<th>European Union</th>
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<tr>
<td>The Universal Declaration of Human Rights</td>
<td>The European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
<td>The EU Charter of Fundamental Rights</td>
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<tr>
<td>The Covenant on Civil and Political Rights</td>
<td>The European Social Charter</td>
<td>The Treaty of European Union</td>
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<tr>
<td>The Covenant on Economic, Social, and Cultural Rights</td>
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While this list is by no means complete and does not include the newly proposed EU Constitution, it provides a broad sample of documents from three sources that have direct applicability to EU and EU member state law: the UN, the Council of Europe, and the EU. At the UN level, the *Universal Declaration of Human Rights* has many similarities to the human rights protections of French human rights instruments. The *Universal Declaration* offers broad guarantees of human rights including universal freedom and equality, freedom of religion, equal rights for men and women, and the right to universal free education.36 Much like French law, the *Universal Declaration* even sanctions limiting human rights in Article 29(2) if it is necessary to preserve public order. However, the *Universal Declaration* differs markedly from French law in

Articles 18 and 26(2). Article 18 of the Universal Declaration assures the freedom of religion in practice, worship, and observance. The French Law of 1965, in contrast, introduces regulations and caveats to religious freedom. While limits to the freedom of religion in public schools imposed by the loi sur la laïcité may be legal according to Article 29(2) of the Universal Declaration, Article 26(2) of the Universal Declaration suggests that the loi sur la laïcité violates the purpose of education agreed on by member nations of the Declaration. Article 26(2) states:

Education shall be directed at the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups. Rather than promoting “understanding, tolerance and friendship among all…racial and religious groups…” as stated in Article 26(2), the loi sur la laïcité appears to suppress the freedom of specific racial and religious groups in the name of public order. In order for the loi sur la laïcité to be legal under the Universal Declaration of Human Rights, it needs to be clearly and convincingly justified as necessary to preserve public order, and the application of the law needs to be clearly and convincingly shown not to violate the principle of “respect for human rights and fundamental freedoms” and the promotion of “understanding, tolerance and friendship among all nations, racial or religious groups.”

The Covenant on Civil and Political Rights also includes new provisions that both strengthen and weaken human rights set out in the Universal Declaration. The Covenant on Civil and Political Rights offers legal protection for a similar range of human rights as the Universal Declaration with the notable addition of human rights protections for the child. However, in Article 4(1), the Covenant allows for nations that have a public emergency to ‘derogue’ from the

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35 Ibid.
36 Ibid.
37 Ibid.
Covenant so long as this does "not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." Further, Article 18 of the Covenant states that a law may limit the freedom of religion if it is "...necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." Since Vaisse defends the loi sur la laïcité partly because it protects against the threat of terrorism in France, the law appears consistent with Covenant Articles 4(1) and 18 on the issue of security if there is a real threat of terrorism in the absence of such law.

Articles 7 and 27 provide alternative grounds to question the legality of the loi sur la laïcité under the Covenant. In Article 7 of the Covenant, it states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." One could argue that the loi sur la laïcité violates Article 7 by degrading individuals whose religious and cultural identity is closely wed to the religious symbols they wear. Article 27 offers more explicit protection of religious freedoms as follows:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 27 appears to guarantee the freedom to practice a religion at a public school if a community of students with the same cultural and religious background attends it. Because Muslim cultures are a large minority in France, it is certain that several schools have clear Muslim cultural and religious 'communities.' The loi sur la laïcité hence imposes a restriction on the freedom of religious and cultural expression contrary to Article 27 of the Covenant on Civil and Political Rights.

The International Covenant on Economic, Social and Cultural Rights guarantees similar human rights protections in the Universal Declaration of Human Rights and the Covenant on

as ibid.
Civil and Political Rights, but it emphasizes social and cultural rights.\footnote{International Covenant on Economic, Social and Cultural Rights. G.A. res. 2200 A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, 1 November 2004 <http://www.hei.unige.ch/humanrts/instree/62escn.html>\textsuperscript{42} It includes common articles from the \textit{Covenant on Civil and Political Rights} in the areas of educational and religious rights and freedoms, and accordingly supports the same legal challenges to the \textit{loi sur la laïcité}. Article 2(2) of the \textit{International Covenant} arguably provides the strongest human rights protections of the three documents, and for that reason it is a strong legal argument against the French law:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\footnote{\textsuperscript{43}}

The words “without discrimination of any kind” suggests that no exceptions allow states to create laws discriminating against “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This then suggests that regardless of social circumstance, France may not legally enact its laws to preserve public order, security, or secularity if it discriminates on these bases. Article 2(2) is further strengthened in Article 4, where the \textit{International Covenant} says that states may only pass laws to limit these rights and freedoms if these laws are “compatible with the nature of these rights and... solely for the purpose of promoting the general welfare in a democratic society.” This suggests that any violations of the Article 2(2) rights and freedoms are illegal unless the law clearly and convincingly upholds rights and freedoms that would otherwise be sacrificed in the absence of the French law.

rights articles from the three UN human rights documents. The *European Social Charter* and *European Convention* therefore reaffirm human rights protection of people in the Council of Europe member states. More significantly, the *European Convention* outlines the authority of European Court of Human Rights (ECHR) to issue binding decisions and advisory opinions on human rights violations of the *European Convention* to the Council of Europe member states.

At the EU level, the *European Union Charter of Fundamental Rights* is a human rights instrument specifically applicable to EU states. The *EU Charter* reaffirms human rights and freedoms expressed in the *Treaty on European Union, Community Treaties*, the *European Convention for the Protection of Human Rights and Freedoms, Social Charters* adopted by the Community and by the Council of Europe, and case law of the ECJ and the ECHR.\(^{46}\) Much like the *Covenant on Civil and Political Rights*, the *EU Charter of Fundamental Rights* includes protections for dignity, and protections against degrading treatment. Article 6 of the *EU Charter*, which guarantees the right to liberty and security of the person, does not resolve the apparent contradiction between liberty and security, but the *Preamble* expressly reaffirms powers and tasks of the EU states with respect to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The *European Convention* in turn takes its definition of security from the three UN documents, and it can therefore be assumed that under Article 6 of the *EU Charter* that a state's policy on "security" is not allowed to sacrifice "liberty" at the expense of human rights and freedoms. The same types of legal objections can thus be made to the *loi sur la laïcité* under the *EU Charter of Fundamental Rights* as the *European Convention* and the three UN human rights documents.

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The 2002 Consolidated Version of the Treaty on European Union (TEU) also incorporates the European Convention into EU law.\textsuperscript{47} In Article 6, the TEU declares that EU states should respect human rights and fundamental freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. As mentioned earlier, the European Convention is itself based on UN human rights instruments of international law. Thus, the TEU connects international human rights documents to regional European human rights documents, and regional European human rights documents to European Union human rights documents. The three levels are part of what makes up the body of European human rights law of the EU, and with each level of overlapping protections, the protections of human rights and freedoms are stronger. A secondary source for fundamental rights mentioned in Article 6 is constitutional traditions common to Member States of the EU. While the principle of secularity is a constitutional tradition of France, this paper will discuss later in the context of British case law that secularity and the manner in which France applied it in law is not a universal application common to all EU states.

Two additional articles of the TEU present additional arguments against the loi sur la laïcité. Articles 11 and 29 suggest that security measures in the EU must emphasize "respect for human rights and fundamental freedoms," and prevent and combat "racism and xenophobia."\textsuperscript{48} This paper has already proposed that the loi sur la laïcité targets specific cultural groups, namely traditional Muslims who wear headscarves. Moreover, the loi sur la laïcité could be said to target the rights and freedoms of girls and women who wear headscarves. The law whether intentionally or unintentionally reduces the religious and thus educational rights and freedoms of Muslim women and children who wear headscarves, and in so doing may stigmatize them as 'potential


\textsuperscript{48} Ibld.
terrorists. The loi sur la laïcité compromises the rule of law because when groups have their own rights and freedoms reduced, their access to impartial justice is curtailed because the court already views them with suspicion because the law has already branded them potential terrorists. Overall, the loi sur la laïcité may violate TEU Article 11 in the area of equal rights for women, the rights of the child, the right to religious freedom, the right to public education, and equality before the law. The new principle offered here is that those who have unequal rights and freedoms in a democracy cannot expect equal standing before the law. This principle is not tested here, but warrants future consideration as a potential critique of any law that affects human rights.

Article 29 of the TEU provides support for protections in Article 11, and more specific guidelines for EU state application of security.° It suggests that EU states must pursue security with measures to prevent and combat racism and xenophobia. Detractors argue that the French secularism law is itself racist and an expression of state xenophobia. Yet, the later part of Article 29 suggests that the loi sur la laïcité may be legal to prevent and combat the crime of terrorism, and offences against children. Proponents of the loi sur la laïcité would argue that Article 29 supports banning headscarves from French public schools as an act of pre-emption against the potential of these children becoming future terrorists. Further, they argue that the real human rights crime being committed is against girls whose families force them to wear headscarves. These headscarves are symbolic of a culture that traditionally affords its women and girls limited rights and freedoms. However, arguing for a causal link between wearing a headscarf and later becoming a terrorist or promoting a culture that will produce terrorists remains an untested assumption, and it is equally possible that the law will encourage more xenophobia and racism than it intends to prevent.

° Ibid.
2.4 The French Secularity Law and European Human Rights Case Law

If the loi sur la laïcité is illegal under European human rights law unless legal necessity is established, it is important to next consider case law of the European Court of Human Rights (ECHR), and the possibility of legal challenges at the European Court of Justice (ECJ). With jurisdiction over violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ECHR has considered three cases involving headscarves in Turkish state schools.50 In the first case Leyla Sahin v. Turkey,51 a medical student Leyla Sahin was barred from taking an exam, and registering or attending classes at University of Istanbul in March 1998 because she violated a university rule against wearing a headscarf. In a June 2004 ruling on the case, the ECHR agreed that the university rules interfered with Sahin’s right to religious freedom. However, the ECHR argued that the Turkish ban on headscarves, and the University’s rule “pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order.”52 The Court found that the interference of Sahin’s rights was necessary because of the complementary and mutually reinforcing principles of secularism and equality. Under Turkish constitutional case law, secularism aims to guarantee democratic values, and uphold the freedom of religion, and equality before the law. The ECHR noted that the “principle [of secularism] could be regarded as necessary for the protection of the democratic system in Turkey.”53 Further, the ECHR also observed that the Turkish law restricts religious freedom as a means to preserve the emphasis on the rights of women guaranteed under the Turkish constitution. The ECHR noted a pervasive Islamic extremist movement in Turkey that was interested in a religious, non-pluralistic society, and in imposing restrictions on the rights and

50 Alan Riley, April 2004.
53 Ibid.
freedoms of others including women. The ECHR saw secularism as a legitimate means by which Turkey could preserve equality between men and women, and respect for the rights of others. The ECHR therefore ruled in favor of the Turkish ban on Islamic headscarves in universities in Leyla Sahin v. Turkey.54

In the case of Zeynep Tekin v. Turkey, the University of Edge in Izmir reprimanded and suspended nursing student Tekin for 15 days in December 1993 for repeatedly wearing a headscarf instead of her required nurse’s headwear. The courts in Turkey dismissed her appeal because of the Turkish constitutional principle of secularism. Before the ECHR had a chance to rule on her case, Tekin withdrew her application on 19 February 2003 without explanation to the ECHR.55 Given the outcome of Leyla Sahin v. Turkey, it is likely that her case would have yielded a similar ruling.

The third related case before the ECHR involved Hayrunnisa Gul, the wife of Turkish Deputy Prime Minister and Foreign Minister Abdullah Gul.56 She filed a case with the ECHR in 1998 after Ankara University prohibited her from attending for wearing a headscarf.57 She withdrew her case on 3 January 200458 because she and her husband had a conflict of interest by both defending and challenging the headscarf law.59 Because of this second withdrawn case, Leyla Sahin v. Turkey remains the ECHR standard European court ruling on state laws banning conspicuous religious attire. The Gul case is noteworthy because it demonstrates the political sensitivity of the issue and the reluctance of national elites with considerable influence to overturn a potentially discriminatory legal tradition. The late withdrawal of the Gul case was itself criticized because any negative publicity or ruling on Turkey’s human rights laws might

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54 Ibid.
55 Ibid.
56 "Hayrunnisa Gul to Withdraw The Case at ECHR,” TurkishPress.com, 3 January 2004.
58 "Hayrunnisa Gul to Withdraw The Case at ECHR,” TurkishPress.com, 3 January 2004.
delay Turkey's accession to the EU. In spite of this criticism, the ECHR was well within its rights to strike the Gul case because under Article 37 (1a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ECHR may strike out a case if "the applicant does not intend to pursue his application."  

Given the ECHR ruling in Leyda Sahin v. Turkey, it is unlikely that a future legal challenge brought before the ECHR regarding the loi sur la laïcité would yield a different ruling. In spite of this fact, another legal possible avenue to challenge the loi sur la laïcité above French national law within the EU is the European Court of Justice (ECJ). To date, the ECJ has not ruled on cases related to religious freedom in schools, and human rights case law of the ECJ has focused mainly on freedom of movement, equal rights in the workplace, and other human rights issues relating to work and business in the EU. Under Article 35(6) of the TFEU, the ECJ has the right to review any case brought before it by EU citizens, the Commission, or EU states, if there is an infringement of the TFEU. Individual applicants must first apply to the Commission, and the Commission then decides whether the case will go before the ECJ. With respect to human rights, the ECJ renders decisions based on EU law drawn from agreements, statutes, conventions, declarations, international norms and regional customs, and member state law. As such, Riley suggests that the loi sur la laïcité may be challenged at the ECJ by referring the court to the UK 1976 Race Relations Act, and its application in the case of Mandla v. Dowell.  

In Mandla v. Dowell, a headmaster of a private school barred an orthodox Sikh boy from entering the school with long hair and a turban because the turban "would accentuate religious

61 The European Court of Justice Web Site, 14 October 2004 <http://curia.eu.int/en/index.htm>
63 Alan Riley, April 2004.
and social distinctions" in a multiracial school. Employing broad definitions of 'racial discrimination' and ‘race' in the *UK Race Relations Act of 1976*, the Mandla family claimed that the headmaster's actions constituted unlawful discrimination because Sikhs are not a religion but a 'racial group'. While the lower court rejected this claim, the House of Lords later ruled that Sikhs were a 'racial' group under the 1976 Act because of their common 'ethnic origins' "even though they were not distinguishable from other people living in the Punjab..." The boy therefore could not follow a 'no turban' rule because the cultural customs of being Sikh prohibited the boy from following the rule. The court concluded that application of the turban rule to the boy was unlawful discrimination regardless of the headmaster's belief that the school would provide better education with such as rule.

The House of Lords ruling in *Mandla v. Dowell* undoubtedly approaches the issue of wearing conspicuous religious symbols in schools considerably differently than the ECHR ruling in *Leyla Sahin v. Turkey*. In *Mandla v. Dowell*, the discussion centers on the issue of racial discrimination because the House of Lords sees religion as a fully integrated part of Sikh culture, whereas the ECHR in *Leyla Sahin v. Turkey*, does not consider the issue of race or ethnic group but discusses the issue mainly in terms of religious discrimination. Nevertheless, the *Mandla v. Dowell* presents a new potential legal challenge for orthodox Muslims who could claim that wearing an Islamic headscarf is not only a part of their religion, but also part of their culture. Two European Community directives in 2000 provide a greater likelihood and authority for the ECJ to rule on human rights issues and therefore against the *loi sur la laïcité* by applying the expansion of human rights established the UK *Mandla v. Dowell case. Council Directive 2000/78/EC* creates a

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References:


[5] Ibid.

[6] Ibid.

[7] Ibid.
framework of workplace equality that prohibits workplace or occupational discrimination based on a person's age, disability, orientation, or religion. **Council Directive 2000/43/EC** creates an obligation for EU states to implement principles of equal treatment with respect to racial and ethnic origins into state law by 2003, and equal treatment with respect to age and disability into state law by 2006. Conceivably, these new protections of rights and freedoms offered to employees in the workplace could, through legal challenge at the ECJ, be extended to students at public institutions in EU states. To date, the UK has implemented these protections, but according to Riley, France has not.\(^5\)

2.5 Preliminary Findings

From this brief discussion of French and European human rights law, it is clear that other EU states are subject to the same body of European human rights law as France, and there is a possibility of overturning the French law at the ECJ by employing the broader definition of 'race' from UK case law. On the one hand, the *loi sur la laïcité* appears to violate clearly defined guarantees of human rights and freedoms guaranteed under European human rights law. On the other hand, certain circumstances such as a state emergency, a need to preserve security, a need to maintain public order, or a need to promote 'positive discrimination' to ensure equality, appear to make it *necessary* for certain human rights and freedoms to be limited under European human rights law. Yet, given the compelling argument that orthodox religion equals race in the *Mandla v. Dowell* case, a preliminary assumption of this Thesis is that the *necessity* defense of the headscarf laws is questionable, and will not be supported by quantitative analysis. A main area of concern in interpreting this exception to human rights protections is that potential human rights violations of the French law or another similar law are easy to identify, but the principle of

necessity itself is more difficult to establish. By necessity, one assumes that there is no other choice, and that that choice must be implemented. While the ECHR in the Leyla Şahin v. Turkey argues that a strict separation of religious and public education is necessary to preserve public order, the House of Lords in Mandla v. Dowell argues that religion is an integral part of certain traditional cultures, and respect for ‘race’ or culture cannot as easily be trumped by calls to preserve public order. Determining legally acceptable and unacceptable levels of public order may likewise be difficult to interpret, yet there may be quantifiable societal factors that may indicate measurably difference between France or Germany relative to other EU countries such as the UK that do not have such a law. In order to account for why some countries have adopted or have considered a French style ban on conspicuous religious symbols in public universities and schools, the next sections of this paper will compare social, economic, and political data of the EU-15 to determine if such laws exist or are being proposed in states that satisfy a necessity exception.

65 Ibid.

CHAPTER THREE
SOCIAL, POLITICAL, AND ECONOMIC FACTORS AND PERCEPTIONS

In this chapter, I conduct statistical analysis to better understand the relationship between bans on headscarves and other conspicuous religious symbols from public schools and colleges, and the social, economic, and political characteristics of different European countries. This chapter first, ranks countries in the EU-15 from most likely to pass a French style ban to least likely, and places these countries into three different 'risk' groups. Second, it develops four factors of variables to compare each group of countries. Third, it analyzes differences between these factors in each group of countries to establish whether headscarf bans can be justified by a principle of necessity or not.

3.1 Likelihood of Banning Headscarves: Ranking the EU-15 Countries

For this analysis, the EU-15 was selected as a representative sample of EU countries because they make up the majority of the EU-25 population, and recent research on Muslim human rights has focused on EU-15 countries. First, data from the statistical tools section of the Eurostat website indicates that as of 2004 the EU-15 made up more than eighty percent of the entire EU population.71 Second, in Chapter 2, most literature on headscarf bans in Europe considers only EU-15 countries such as France, Germany, or Belgium. A March 2005 report released by International Helsinki Federation for Human Rights (IHF) is the most recent in-depth study of the treatment of Muslims in EU, which only discusses countries in the EU-15.

In the IHF's 2005 Report, the social climate of the Muslim communities in eleven of the EU-15 states has been deteriorating since September 11, 2001. The report argues that terrorist

incidents such as the Madrid Bombings, hostage-takings, and the recent murder of filmmaker Theo van Gogh in the Netherlands have contributed to an unacceptably high level of intolerance and discrimination against Muslims by citizens, schools, places of work, the police, and the governments in these countries.\textsuperscript{72} The IHF Report also provides considerable details on each country's record of discrimination against Muslims, and laws or policies that affect the individual freedom to wear headscarves. Table 2 summarizing data from the IHF Report indicates that laws and discrimination against wearing or not wearing headscarves in public schools is an EU-15 issue not restricted to France and Germany, or limited to the sphere of public schools. The issue touches many aspects of the lives of Muslim women and children who face everyday discrimination at schools, in the courts, or at work or in efforts to secure employment. Legal challenges have ranged from successful in the UK to unsuccessful in France, and have direct impacts on the social, political, and economic aspects of the lives of Muslim people, particularly women and children. At the political level, the chart indicates that politicians have been actively proposing legislation concerning the headscarf and even the full body covering or Burqa. Debates concerning the legality of having laws prohibiting people's right to wear headscarves are addressed in the tables in the areas of education, and women's difficulties seeking and securing work when wearing headscarves. Proponents of headscarf bans in France, as already discussed, suggest the law will in part allow a previously economically disadvantaged group the opportunity to ultimately become greater wage earners and contributors to the economy. The headscarf debate is also an economic issue because these tables indicate that some countries' women failed to find work or hold onto employment because of discrimination against them for wearing a headscarf.

\textsuperscript{72} Ibid
A working hypothesis from this data and Table 2 is that certain countries are more likely to pass laws banning headscarves in public schools and universities than others. Using the data summarized in Table 2 and descriptions of each country in the IHF Report, this section proposes a general ranking of states that are most or least likely to pass a ban on headscarves in public schools. Additional qualitative data from *Country Reports on Human Rights Practices 2004*, and the *International Religious Freedom Report 2004* from the US Department of State website\(^\text{21}\) give an approximate ranking for the four remaining EU-15 countries not included in the IHF Report - Finland, Portugal, Ireland, and Luxembourg. Table 3 provides a general ranking scheme of the EU-15 countries according to which are the most or least likely to pass federal level laws banning headscarves from national public schools. In this table, France, which led Europe in banning headscarves, is ranked first and remains in the table because the French ban includes most, but not all of provinces of France. France is followed by Germany because several states have bans, and then Belgium because most cities have municipal bans. These three countries will comprise Group 1, or High Risk Countries to have a federal French style ban on conspicuous religious symbols in all public schools and universities.

<table>
<thead>
<tr>
<th>Group</th>
<th>Most Likely</th>
<th>Least Likely</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group I - High Risk Countries</strong></td>
<td>1) France 2) Germany 3) Belgium</td>
<td>4) Denmark 5) Netherlands 6) Austria 7) Spain 8) Italy</td>
</tr>
<tr>
<td><strong>Group II - Medium Risk Countries</strong></td>
<td>9) Sweden 10) UK 11) Finland 12) Ireland 13) Greece 14) Portugal 15) Luxembourg</td>
<td></td>
</tr>
<tr>
<td><strong>Group III - Low Risk Countries</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

From the IHF Report, Denmark will follow Belgium because of several court cases related to headscarves, and vocal support for headscarf bans from right wing parties that threaten to push forward bans in the future. According to the IHF Report, the Netherlands appears to fit position five because there have also been a number of court cases related to headscarves, and public opinion about a possible ban appears divided. Austria will follow the Netherlands in position six because the IHF Report describes problems with certain schools trying to regulate school uniforms in spite of government opposition. Despite support from far right political parties for the ban, the idea of a ban has had less public debate than either Denmark or the Netherlands. From
the IHF Report, Spain fits position seven because it has had some problems with schools trying to develop uniform rules that discriminate against headscarves. However, Muslim girls have reportedly felt comfortable wearing headscarves to schools in most areas of the country. Italy follows Spain because one or two court cases to ban religious symbols from schools have been tempered by strong Vatican opposition to any ban and limited public debate. These five countries are categorized in Table 3 as Group II countries, or Medium Risk Countries.

In the next group, Sweden appears at the top. Although Sweden normally has a strong record of human rights the IHF Report writes that many Swedish citizens openly view the headscarf as a symbol of female oppression, and there could therefore still be a ban on the basis of "positive discrimination." However, the government has strongly opposed such measures. After Sweden, the UK with its strong anti-ban laws, described earlier in this paper and in the IHF Report, almost guarantees that a headscarf ban will never enter into law. Despite this fact, the IHF Report indicates a disproportionate number of Muslim’s detained for alleged terrorist activities. After the UK, the reports from the Department of State website suggest Finland should follow. In the reports, Finland has a very small Muslim population that is sometimes the target of racism, but Finland has very broad religious rights protected by law. Following Finland, the same sources suggest Ireland should be in position twelve. The Department of State Reports indicate that Ireland has a small Muslim minority, but national laws allow schools to bar students of certain religions from attending certain schools if their student numbers as a group become too high in number for the particular religious orientation of a Catholic or Muslim school. Thus far, there are no cases where this type of discrimination has been applied against any religious minority. At the moment it fits into this third group, but Muslim immigration may be a decisive factor that may push Ireland into group three sometime in the distant future. Near the bottom of the list, the IHF Report suggests that Greece is one of the least likely of these countries to pass a ban on
headscarves because wearing headscarves is generally accepted as a normal cultural practice. After Greece, the Department of State documents suggest Portugal should follow because it has a negligible Muslim population. It does, however, have tensions with its main Roma minority group, and a future influx of Muslim immigration may change treatment of Muslims in the distant future. Lastly, the Department of State documents describe Luxembourg as having a negligible Muslim population, and a society with no tensions between different religions. This group of states in Table 3 comprises Group III countries, or Low Risk Countries. Since all of these assumptions about the likelihood of the EU-15 states to pass complete federal bans on conspicuous religious symbols from all public schools and universities are based on qualitative data related to human, religious, and legal rights, it is important to next assess the appropriateness of these rankings by comparing social, political, and economic data about these countries.

3.2 Four Factors: Population, Economic, Racial/Cultural, and Prejudice

In order to determine the social, political, and economic data to test, the IHF and the Department of State reports are useful in assessing overall society level problems in the EU-15 states. Each of the countries in the IHF study has large and growing Muslim populations concentrated in major urban centers with a high degree of these populations economically marginalized. In contrast, the Department of State reports suggest that the Muslim population of the remaining four EU-15 countries is very small. Given that the IHF Report suggests deteriorating conditions for Muslim people in these countries since the 9-11 attacks, a growing Muslim population in these countries might generate increasing levels of suspicion or fear amongst citizens and political policy adjustments that reflect the negative view of their constituents. This may translate into laws or policies aimed at limiting the rights of Muslims for
security or integration reasons. It is possible that the same process may develop in the future for Finland, Portugal, Ireland, and Luxembourg as the Muslim population increases. It is therefore important to first correlate the overall population of Muslims and the rate of increase of this population with this list of countries more and less likely to pass a headscarf law in Table 3. For this study, this group of testable variables is referred to as the Population Factors.

A law banning headscarves from public schools may also be connected to the educational and economic achievements of Muslim people. Earlier in this paper, it was already discussed how policy makers justified the law in part as a positive discrimination policy to give disadvantaged Muslim women and children in France educational and economic opportunities they would not otherwise enjoy. The IHF Report states that in eleven states of the EU-15, Muslim minorities tend to have lower overall educational achievements and levels of unemployment than the rest of the population. An examination of economic factors including the GDP/head, unemployment rate, and social spending may therefore help predict the likelihood of a country passing a French style ban on headscarves. A positive or negative correlation with the states listed in Table 3 will help determine whether such a law would satisfy the necessity condition for each of the EU-15 states.

This group of testable variables is referred to as the Economic Factors for this study.

Another useful test for this study is to look at the perception of the citizens of each country towards people of another religion and culture, and look at their voting patterns to determine if they are electing politicians who are more likely to support such a law. This test will endeavor to determine if negative perceptions of another religion or culture, and voting patterns positively or negatively correlate with the list of countries most or least likely to pass such a law. A strong positive correlation of this kind may indicate irrational fear that policy makers have translated

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35 Ibid.
into policy without truly satisfying any principle of necessity. On the other hand, a strong negative correlation may suggest that attitudes have less of an effect on public policy than anticipated and that other factors have better explanatory power. This group of variables is referred to as the Prejudice Factors for this paper.

Testing public perceptions in this study can also establish the level of tension between groups of another culture in particular countries. Examining data on the number of those who have perceived discrimination, witnessed discrimination, or have experienced tension between different cultural groups may give a more accurate estimation about whether there is truly a necessity for a ban in any of the EU-15 states. A final way to assess the accuracy of these claims is to also test the level of violent crime and see whether it correlates with the statistics on the perceptions of the citizenry. This group is referred to as the Racial/Cultural Tension Factors for this study.

In Table 4, these four groups of factors are matched with related testable variables. In the next section, each variable in the four groups will be graphed to compare the similarities and differences between each of the three Risk Groups. For each Risk Group, data from each of the countries will be averaged with each of these variables so that the three Risk Groups can be listed as three discrete variables in each chart. By testing the general tendencies of the three Risk Groups with these four variable groups, this paper hopes to determine how well the social, economic, and political situation of these countries correlates with the Table 3 list of countries most and least likely to pass a law banning headscarves in public schools, and whether the results can help policy makers and researchers make accurate predictions about the social, economic, and political conditions that might promote a French style ban. Finally, this analysis hopes to provide data to address the main question of inquiry: whether or not the quantitative data in this section
supports the principle of necessity as justification for a French style *loi sur la laïcité* or secularity law banning headscarves from public schools and colleges in any of the EU-15 countries.

<table>
<thead>
<tr>
<th>Table 4. List of Individual Variables in each of the Four-Factor Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Factor Group</strong></td>
</tr>
</tbody>
</table>
| Population Factors | 1) Share of EU-15 Population  
2) Population of Foreign Origin  
3) Muslim Population  
4) Catholic and Protestant Population  
5) Size of Largest Religious Group |
| Economic Factors | 1) GDP per Person  
2) Unemployment  
3) Unemployment Growth  
4) Government Expenditure for Social Programs |
| Racial/Cultural Factors | 1) % who Experienced Discrimination  
2) % who Witnessed Discrimination  
3) % who Suffer Tension Between Race-Ethnic Groups  
4) Rate of Serious Assaults  
5) Rate of Rapes  
6) Rate of Reported Thefts |
| Prejudice Factors | 1) % who Find Another Race "Disturbing"  
2) % who Find Another Religion "Disturbing"  
3) % for Right and Far Left EP Members Elected |

3.3 Analysis

**Population Factors**

This thesis already discussed that population may be a factor determining a country’s likelihood to have a law banning headscarves in schools. To better understand the extent to which population determines this likelihood, this section examines data on five variables obtained from different sources. This section draws data for the first variable, the average percentage share of the EU-15 population, from online statistical tools on the Eurostat section of the Europa website for the European Union.86 Data for the second variable, the average population of foreign origin, 85 Eurostat Statistical Tools, Eurostat, European Commission, Europa Website, 21 February 2006 <http://epp.eurostat.ec.europa.eu/page?_pageid=1060%2C106078%2C1090_30298591&_func=portal&schema=ORTIAL>.
was gathered from a statistical database on the UNECE website. Data on the third and fourth variables concerning Muslim, Catholic, and Protestant religions came from the 2001 World Religions Survey.

### Table 5: Summary Statistics for Countries in Each Risk Group

<table>
<thead>
<tr>
<th>Row Number</th>
<th>Characteristics</th>
<th>HIGH Risk</th>
<th>MEDIUM Risk</th>
<th>LOW Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Average % share of EU-15 population in 2004</td>
<td>13.3</td>
<td>6.7</td>
<td>3.7</td>
</tr>
<tr>
<td>2</td>
<td>Average % population of the largest religious group in 2004</td>
<td>64.0</td>
<td>74.5</td>
<td>89.3</td>
</tr>
<tr>
<td>3</td>
<td>Average % of population of Catholics in Mid 2000</td>
<td>67.1</td>
<td>62.4</td>
<td>42.5</td>
</tr>
<tr>
<td>4</td>
<td>Average % of population of Protestants in 2001</td>
<td>16.4</td>
<td>28.9</td>
<td>25.9</td>
</tr>
<tr>
<td>5</td>
<td>Average GDP per capita in 2004</td>
<td>$26,600</td>
<td>$27,420</td>
<td>$29,714</td>
</tr>
<tr>
<td>6</td>
<td>Average Unemployment rate in 2004</td>
<td>9.1</td>
<td>6.7</td>
<td>6.6</td>
</tr>
<tr>
<td>7</td>
<td>Average % Growth in Unemployment Rate in 2004</td>
<td>1.24</td>
<td>6.13</td>
<td>0.038</td>
</tr>
<tr>
<td>8</td>
<td>Average government social expenditure (% of GDP in 2002)</td>
<td>29.6</td>
<td>26.8</td>
<td>25.3</td>
</tr>
<tr>
<td>9</td>
<td>Average % of People Who See Tensions Between Racial/Ethnic Groups in 2004</td>
<td>53.3</td>
<td>44.6</td>
<td>42.0</td>
</tr>
<tr>
<td>10</td>
<td>Average % of people who experienced discrimination in 2004</td>
<td>3.3</td>
<td>2.8</td>
<td>3.0</td>
</tr>
<tr>
<td>11</td>
<td>Average % of people who witnessed discrimination in 2004</td>
<td>21.7</td>
<td>23.6</td>
<td>22.4</td>
</tr>
<tr>
<td>12</td>
<td>Average rate of reported rapes per 1000 people in 2000</td>
<td>10.5</td>
<td>7.5</td>
<td>8.4</td>
</tr>
<tr>
<td>13</td>
<td>Average rate of reported thefts per 1000 people in 2000</td>
<td>123.1</td>
<td>101.2</td>
<td>55.6</td>
</tr>
<tr>
<td>14</td>
<td>Average % of People who find Another Race &quot;Disturbing&quot;</td>
<td>21.0</td>
<td>13.2</td>
<td>14.6</td>
</tr>
<tr>
<td>15</td>
<td>Average % of Far Right EP members</td>
<td>3.7</td>
<td>6.4</td>
<td>6.7</td>
</tr>
<tr>
<td>16</td>
<td>Average % of Far Left EP members</td>
<td>7.3</td>
<td>5.7</td>
<td>5.7</td>
</tr>
</tbody>
</table>

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80 Note: Data for Greece and UK on the Average % Growth in Unemployment Rate in 2004 is unavailable and is not included in this statistic.
Christian Encyclopedia. And finally, data on the fifth variable on the largest religious group was drawn from the 2004 World Almanac & Book of Facts.

As is presented in Table 5 (Row 1), demographic data of each Risk Group in 2001 indicates that High Risk countries include an average of 13.3% of the EU-15 population, Medium Risk countries include on average 6.8% of the EU-15 population, and Low Risk countries include on average 3.7% of the EU-15 population. These percentages suggest that High Risk Countries have a greater capacity for large urban concentrations of immigrants seeking work opportunities. Indeed, Figure 1 shows a clear tendency for larger numbers of immigrants to settle in more densely populated High Risk countries. Figure 1 suggests that High Risk countries tend to have a much higher overall population of foreign-born people than Medium and Low Risk countries.

Figure 1. Average Population of Foreign Origin in 1000s in 2001 for Countries in Each Risk Group

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Figure 2, portraying the average growth rate in percent of Muslim populations in each Risk Group from 1960 to mid-2000 supports evidence in Figure 1 that immigrants to the EU-15 tend to settle in more densely populated countries. While Figure 2 indicates that Medium and Low Risk countries have only a small difference in their respective percentages of Muslim people compared to High Risk countries, High Risk countries have more than double the percentage of Muslim people than the other risk groups. Another interesting finding in Figure 2 is the growth rate of the Muslim population for each Risk Group. While Muslim immigration for the three groups peaked between 1970 and 1990, and is currently slowing down, the average growth rate of Muslim people for countries in the High Risk group remains much higher than the other two groups. The Medium and Low Risk groups in fact appear to be converging with the Medium Risk group entering a period of negative growth, and the Low Risk group approaching zero growth. In contrast, there is a small but continual upward growth trend in the Muslim population as of the middle of 2000 for countries in the High Risk group. Predicting these rates at a 2005 level suggests that the Middle and Low Risk groups have converged in their relative percentages of Muslim people and growth has almost stopped, while the High Risk group has continued to grow steadily but at a slower rate.
One possible approach to understanding why bans on headscarves would be implemented in more densely populated countries with larger Muslim populations, and Muslim populations that are growing faster than other countries, is to turn to one of the purposes of the loi sur la laïcité. The French law, as discussed earlier, aims in part to maintain a strict separation between religion and education. This leads to questions about whether there are certain religious demographics that might lead to a tendency to implement this type of law in other countries. Data on the average percentage of the two largest religious groups in 2001 suggests that the percentage of people who are Catholics is higher in the High Risk countries than the other two groups (Table 5, Rows 3 and 4). A general conclusion from this data is that countries with Catholic majority religions may have a greater tendency to have laws banning headscarves than countries with less Catholics.
Because some countries in each group have a majority Catholic or a majority Protestant population, a more robust test to determine the relationship between religion and the countries that have a French-style law is to see which of the three groups has the largest or smallest religious majority population. From Table 5 (Row 2), there is a tendency for High Risk countries in 2004 to have a smaller average religious majority than the other two risk groups.

From Population Factor variables, there appears to be a tendency for the higher risk countries to be more densely populated and to have larger populations of immigrants, which according to the IHF report is concentrated in urban centers. The overall percentage of the population of Muslims in High Risk countries tends to be more than double that of the other two groups, and the growth rate of this population, while slowing, continues to be significantly higher than the other two groups. High Risk countries appear to have more Catholics than countries in the other two groups, and High Risk countries appear to have a smaller religious majority than the other two groups. A possible conclusion from this section is that policy makers or citizens in countries with smaller religious majorities may feel more threatened because of their more rapidly growing minority Islamic populations.

**Economic Factors**

Other measurable data that may indicate tendencies about why certain countries pass French-style bans on headscarves and others do not can be drawn from economic factors that directly affect the lives of citizens in each EU-15 country. For this section, data drawn from the Eurostat statistical tool on the EU Europa website on four variables including GDP, unemployment.

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rates, unemployment growth, and the level of social spending, will help to determine how important economic factors are in assessing the risk of countries passing a French heads-count law.

One standard measure to determine the economic health of a country for its citizens is the measure of the average GDP. Although upper level income earners tend to distort the average income level of people in a nation, GDP results will still allow for useful comparisons to be made between the three Risk Groups. Data on GDP for the three risk groups indicates that citizens in countries in the High and Moderate Risk groups earn less than countries in the Low Risk group (Table 5, Row 5). A lower GDP may indicate a country of citizens struggling on low wages, a country with an economically marginalized minority population, or some combination of the two factors.

Unemployment rates in Figure 3 indicate no substantial differences for countries in Low and Medium Risk countries, but roughly one-third greater unemployment rates in High Risk countries. Drawing on conclusions from the IHRC Report that Muslims tend to be economically marginalized, it can be assumed that a large number of the unemployed people in countries in the High Risk group are of Muslim origin. This tendency and the fact that the IHRC Report indicates that Muslim communities tend to be concentrated in large urban centers may mean that Muslim unemployment is a large social pressure that may promote negative attitudes and perceptions about people of Muslim origin.
Comparison of data on the average growth in unemployment indicates higher increases in the percentage level of unemployment for Low and Medium Risk countries than High Risk Groups in 2004. However, it is difficult to draw any substantial conclusions from this data without looking at long-term trends of increases or decreases in the level of unemployment.

The final Economic Factor variable is the average percentage of government expenditure on social programs. As Table 5 (Row 8) indicates High Risk countries spend almost 30% on average, while High and Medium Risk countries spent between 25-27% on average. A country with a lot of social programs may initially appear positive for citizens who seek such benefits as inexpensive university education or free medical care. However, higher levels of social spending with higher levels of unemployment may indicate a larger unemployed population being supported by a government welfare program.
The variables from the Economic Factors group suggest that High Risk countries have lower wages, higher unemployment, and a higher level of spending on social programs than countries in the other two groups. Even though 2004 statistics indicated that the rate of unemployment growth was less for the High Risk group than the other two groups, the difference in the overall level of unemployment between the High Risk group and the other two groups is still considerable. If Muslim people are tending to find low paying jobs and unemployment in High Risk countries, the higher level of social spending in High Risk countries may be due to higher welfare payments to support this large group of unemployed Muslims. Citizens who pay taxes to support these programs may resent the high level of social spending for this purpose, and may develop a negative view of a culture that they perceive contributes marginally to society. Awareness of Economic disparities between Muslim populations and the rest of society may also be heightened by the concentration of highly visible Muslim communities in large urban centers.

Racial/Cultural Factors

Having examined demographic statistics on population and economics, this thesis has already suggested that these factors may have a negative affect on the perceptions of individuals about Muslim people. It is important therefore to next examine racial or cultural tensions in the countries in the EU-15 for each Risk Group to understand the seriousness of these social problems, and how these might have an effect on people's prejudices and ultimately government policy towards Muslim people. Finally, this section may allow some preliminary comments on whether these conditions justify applying a principle of necessity to pass a French style ban on headscarves in public schools and universities. For this analysis, data on discrimination was
drawn from the EU public opinion survey Eurobarometer 57.0: Discrimination in Europe. Data on perceived racial or cultural tension was drawn from the European Foundation’s European Quality of Life Survey 2003 published in the 2004 report Quality of life in Europe: First Results of a new pan-European Survey. The final series of data on crime was gathered from the online UNECE statistical database.

The first data compared in this section was the percentage of people who experienced racial discrimination in countries in each of the Risk Groups in 2004. The results, as is presented in Table 5 (Rows 9 and 10) indicate that (i) the percentage of people who experienced discrimination was low and not substantially different for each of the risk groups, and (ii) the average percentage of people who witnessed discrimination for each Risk Group was about a fifth of the population throughout the EU-15 had witnessed discrimination in 2004. This high level of discrimination throughout the EU-15 may be a factor contributing to government policy decisions to pass a headscarf ban. In the section on Population Facts, this thesis already discussed how Muslims tended to move to population dense urban centers of countries in the High Risk group. Government policy in the High Risk countries towards headscarves may in part be a reflection of high levels of discrimination that existed before a large increase in the population of Muslims. As the population of Muslims increased and became especially visible in urban centers in High Risk countries, governments may simply be more openly expressing this discrimination in policy as the mainstream societies become smaller in size relative to the Muslim populations.

Table 5 (Row 9) indicates even higher levels of discrimination in the EU-15: An average of 53.3% of citizens in High Risk countries witnessed tensions between racial and ethnic groups.

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in 2004, while only 42% of citizens in Low Risk countries witnessed racial/ethnic tensions in the same year. It can be concluded from this table that there may be a higher level of racial/cultural tension with larger Muslim populations in High Risk countries. This may also be related to higher levels of unemployment and the smaller size of the religious majority in High Risk countries compared with Low Risk countries discussed earlier.

In order to determine whether these perceptions accurately reflect the social reality of race or cultural problems particularly in the High Risk countries, the next figures provide violent crime statistics for each Risk Group.

Figure 4. Average Rate of Reported Serious Assaults per 1000 People in 2000 for Countries in Each Risk Group

The tendency in Table 5 (Row 9) that there may be greater tensions between ethnic or cultural groups in High Risk countries than Low Risk countries is very well supported by

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statistical data in Figure 4 from 2000. Figure 4 indicates that the average rate of serious assaults in the High Risk group is almost three times the rate of the Medium Risk countries, and more than four times the rate of Low Risk countries. No substantial differences were found between each risk group when the average rate of reported rapes in 2000 was compared (Table 5, Row 12).

The general tendency for High Risk groups to have more violent crime than the Medium or Low Risk groups is supported by data in Table 5 (Row 13). This data indicates that there is a marked difference between each of the groups with the rate of theft in the High Risk group being clearly higher than the Medium Risk group, and the Medium Risk group being almost double the rate of reported theft in the Low Risk group.

While discrimination appears equally common to countries in all three Risk groups, perceptions of racial or cultural tensions is higher in High Risk countries than other countries. Figure 4 shows that High Risk countries are more violent than Low Risk countries. A positive correlation between perceptions of racial or cultural tensions and statistics on the level of societal violence suggest that societal violence may take place between people of different races or cultures. As the IHR Report indicated, some violence is directed at Muslim women and children wearing headscarves. At the same time, Muslims have been the perpetrators of violence, and the IHR Report notes that some terrorism in the EU has threatened public safety. High levels of discrimination, tension between races or cultures, and inter-cultural violent crime, may have a direct feedback effect on people's prejudices. This connection will be considered in the next variables in the Prejudice Group.
Prejudice Factors

In this section, Prejudice Factors will help determine if there are clear differences between the three risk groups in how they view Muslim minorities, and if this data correlates with the findings from the Population, Economic, and Race/Cultural Tension Factors. Data on perceptions of race and religion for this section were drawn from the EU public opinion survey Eurobarometer 53: Public Opinion in the European Union published in 2000. This section will end by assessing voting patterns to determine the impact of racial and religious prejudice on leadership and policy. This last data set comes from the EU Elections 2004 website.

Data on the percentage of people that find another race “disturbing” indicates only a small difference between the Medium and Low Risk groups. Table 5 (Row 14), however, illustrates that the percentage of people that find another race “disturbing” is approximately one-third greater in countries in the High Risk group than in countries in the Low Risk group.

Figure 5, portraying the average percentage of people who find another religion “disturbing” for countries in each Risk Group in 2004, supports clear differences between the High Risk and Low Risk group. Data on the percentage of people who find another religion “disturbing” in High Risk countries is almost 75 percent higher than in the Low Risk countries. This difference is statistically significant. Taken together, Table 5 (Row 14) and Figure 5 suggest that the population, economic, and race or cultural tension and violence variables considered earlier may account for this higher level of prejudice in High Risk countries.

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Data on the average percentage of far right and far left European Parliament Members elected in 2004 for countries in each Risk Group in Table 5 (Rows 15 and 16) reflects that public opinion surveys reporting high levels of discrimination and prejudice in EU-15 states is an accurate reflection of societal attitudes towards minority groups, particularly Muslims. Over ten percent of the European Union EP Members either represent far right or far left political parties. As Table 5 (Rows 15 and 16) shows, the number of far left Members tends to be higher in the Medium and Low Risk countries than in the High Risk countries. However, the number of far right Members tends to be higher in the High Risk countries than the Low Risk countries. This suggests that far right candidates are more likely to propose legislation to ban headscarves. Earlier this paper supports this claim with country data from the IHR Report, which claims that
certain right wing as opposed to left wing parties openly advocated bans on Muslim headscarves in public schools and universities.

3.4 Main Findings

By applying the eighteen separate variables making up Population, Economic, Race/Religious Tension, and Prejudice Factors to the three Risk Groups, the results in this section suggest a high correlation between the data for each Risk Group and the initial grouping of the Fifteen (15) countries in Table 3 into particular Risk Groups. This section does not offer any robust test to verify whether the countries are ranked in the exact order, but the evidence suggests that the ranking is reasonably correct, and High Risk countries are different in most cases than the Medium or Low Risk groups. Some graphs indicate little difference between the groups, and little differences between the Medium or Low Risk Groups, but the overall tendency reflects a pattern of greater problems in High Risk countries than Medium Risk countries, and much greater problems in High Risk countries than Low Risk countries. Table 6 summarizes the main findings for each variable test group, and indicates a pattern of unique conditions for the High Risk countries.

This thesis assumes that the findings in Table 6 for each of these factors are interrelated with affects and feedback affects on each other. The smaller religious majority in High Risk countries could be a factor that accounts for higher levels of prejudice in High Risk countries than the other two groups. A majority religion that sees its relative numbers decrease in comparison to a rapidly growing and very visible Muslim population in large urban centers in High Risk countries may exacerbate prejudice to the point that the level of mental or cultural tensions increase, and citizens begin voting in greater numbers for cultural protectionist right wing candidates in High Risk countries. As was commented earlier in this section, higher levels of unemployment in High Risk countries may explain the higher levels of social spending in High
Risk countries. Tax payers who pay to support what they perceive as a growing population of “free-riders” in high risk countries may develop resentment, which may lead to greater racial or cultural tensions, increased prejudice, and the electing of officials who support cultural protectionist measures against Muslims such as a French style laws in High Risk countries.

Greater prejudice in High Risk countries may exacerbate economic marginality for Muslim minorities, and lead to greater racial or cultural tension. Finally, the positive correlation between perceptions of racial or cultural tensions and statistics on the level of societal violence suggests that societal violence may take place between people of different races or cultures. High levels of discrimination, tension between races or cultures, and intercultural violent crime, may have a direct feedback effect on people’s prejudices and ultimately government policies.

The intertwining of these variables provides a greater understanding about the social, economic, and political conditions of the High Risk countries and how they differ from countries in the other two risk groups. This thesis proposes that high levels of discrimination and racial tension throughout the EU-15, coupled with a significant political support of right-wing EU Parliament candidates suggest that headscarf laws are partly cultural protectionist measures that appeal to a prejudiced populist electorate, and sincere efforts to reduce discrimination and prejudice, and improve the overall economic opportunities for marginalized Muslim women and children. As such, this data analysis also indicates the maximum level or threshold of particular societal stress before politicians may pass a French style law. Thus, policymakers may be able to look at their state demographics and predict which country is next. In spite of this consideration, this research is not intended to prescribe to policymakers the conditions under which their respective countries should or must pass laws banning headscarves in public schools or universities. General tendencies observed in this thesis are better left for policy predictions. The fact that there are much higher levels of serious assault and higher levels of racial tension and
discrimination against Muslims in the High Risk countries than other countries suggests that there may be other more reasonable policy options that politicians should consider to achieve integration. Data from this section identifies key differences between different groups of EU-15, and greater difficulties integrating Muslim communities into certain EU-15 states. While the differences between the High Risk group and the other groups are substantial relative to the other two groups, the evidence discussed here does not suggest that economic, political, or social problems make headcounts buts necessary.

Table 6. Summary of Tendencies for the Three Risk Groups

<table>
<thead>
<tr>
<th>Factor Group</th>
<th>Main Findings</th>
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</thead>
<tbody>
<tr>
<td>Population Factors</td>
<td>1) Higher risk countries are more densely populated with larger populations of Muslim immigrants concentrated in urban centers.</td>
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<td></td>
<td>2) High risk countries have more Catholics, and a smaller religious majority than the other two groups.</td>
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<tr>
<td>Economic Factors</td>
<td>3) High risk countries have lower wages, higher unemployment, and a higher level of spending on social programs than countries in the other two groups.</td>
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<tr>
<td>Racial/Cultural Tension Factors</td>
<td>4) High levels of discrimination are common to all risk groups.</td>
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<td></td>
<td>5) Perceptions of racial or cultural tensions are higher in High Risk countries than other countries.</td>
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<td></td>
<td>6) High risk countries are more violent than the other two groups of countries.</td>
</tr>
<tr>
<td>Prejudice Factors</td>
<td>7) Public opinion surveys suggest countries in all Risk Groups have high levels of prejudice against people of another race or religion.</td>
</tr>
<tr>
<td></td>
<td>8) Prejudice is also reflected in voting patterns, with a large number of far right and far left MEP Members elected in each risk Group.</td>
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<tr>
<td></td>
<td>9) The data indicates that a larger percentage of far right MEP Members were elected in the High Risk group than the other two groups.</td>
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</table>
CHAPTER FOUR
CONCLUSIONS

The main purpose of this thesis was to investigate controversy over whether the *loi sur la laïcité* or similar laws in other parts of Europe can be justified even though they appear to violate international human rights. The analysis of European human rights legal instruments at the UN, Council of Europe, and EU levels provides examples of several areas where France's *loi sur la laïcité* violates human rights protected by these instruments. Since all EU states are parties to these legal instruments, any country passing a French style law banning headscarves could be considered to violate the human rights protections in these documents. Belgium and Germany violate the same kinds of human rights protections as France. This thesis considered social, economic, and political conditions that might make it necessary for France, Germany, and Belgium to violate human rights with a headscarf ban. The necessity exception drawn from European human rights law statutes justifies a French style headscarf law and other similar laws only if such laws prevent a greater loss of human rights than they would without such a law. The quantitative analysis section on social, economic, and political data for three types of countries in the EU-15 determined that the High Risk countries including France, Germany, and Belgium have social, political, and economic conditions that predispose their citizens to higher levels of racial or cultural tensions, violent crime, and similar levels of prejudice, and far right political representation than other countries in the EU-15. This thesis found the most marked disparities between the High Risk countries and the Medium and Low Risk countries in the serious assault rate, the theft rate, and the size of foreign and Muslim populations. These variables therefore most strongly correlate with headscarf bans. Smaller but substantial differences can also be found in the size of the religious majority, unemployment rates, the percentage of people who see race/ethnic tension, the percentage of people who find another race or religion "disturbing", the
average GDP per capita, and the reported rate of theft. These variables probably have an impact on states passing headscarf bans, but their connection is not as clear as the first group of variables. Smaller differences could be found in voting tendencies, the percentage government social expenditure, the percentage of people who experienced discrimination, and reported rate of rapes. While there is a small difference in voting tendencies, this difference is important in this case because it indicates that the higher levels of intolerance towards people of another culture or religious in High Risk countries is being reflected by the attitudes of policymakers and their purpose in promoting headscarf bans. Small differences in social spending indicate a weak but possible pattern of governments in High Risk countries prepping up larger populations of unemployed Muslims. This study found that the percentage of people who witnessed discrimination was similar in all groups, and consistently over twenty percent. Though there was little difference in this variable, it suggests that in combination of other factors the discrimination variable may have been important as a rationale for policymakers to pass headscarf laws. The percentage growth in unemployment indicated the opposite results, with the Low and Medium Risk countries having a much higher growth in unemployment. This thesis could not account for this surprising tendency, but this thesis argues that unemployment is still an important difference between the High and Low Risk countries because the overall rate is still substantially higher than the Low Risk countries.

While there are significant differences between High Risk countries and the other EU-15 countries, this research indicates that headscarf laws may have partly been passed to address high level of prejudice and discrimination towards Muslim peoples, but because of information on voting tendencies and high levels of discrimination in all Risk groups a significant purpose of these laws may have been to consciously favor the majority populations’ negative views on race and religion. More simply put, countries that have passed headscarf laws have done so partly to
protect the human rights of Muslim women and children, but also to create systemic
discrimination that reflects widespread negativity towards their Muslim populations. This
conclusion provides support for an ECJ legal challenge to overturn the ECHR rulings its broader
definition of 'race' from the Mandila v. Dowell case. The qualitative analysis section of this
Thesis supports the hypothesis that laws in France, Belgium, and Germany banning conspicuous
religious symbols such as headscarves from public universities and schools may be in violation of
European human rights treaties.

Quantitative data from this research is imperfect, and provides an idea of
trends or tendencies that continue to evolve or change over time. The eighteen variables in this
study also could not consider every issue of importance to this investigation, and can therefore
only provide a greater understanding and not a complete understanding of issues concerning
European headscarf laws. This study is able to raise disturbing questions about why the laws have
been considered or have been passed in countries of the EU-15. Maybe caught between high
levels of racial prejudice, discrimination, and violent crime at a societal level, and a desire to
protect society from terrorism and apply a 'positive discrimination' to improve the lives and
opportunities of socially and economically derogated Muslim communities, High Risk states
have approached integration through policies that emphasize conformity to an 'official' culture
and secularism – the religion of no religion. The adjustment for communities that have to
conform to a new society may in the end face greater strains than they would in societies that
embrace greater difference and encourage more societal tolerance. If there are certain 'threshold'
levels of social, economic, and political factors that turn Medium Risk countries into High Risk
countries, continued growth in European Muslim populations may push High Risk countries into
more extreme assimilationist policies that deny that culture is fluid and changing, and that
Muslim communities in France are just as French as any native French person. Policymakers are
well advised to go beyond the legality of their policies, and to try to understand what motivates their policies or laws and the best approach to long-term inclusive integration of Muslims and other minority communities into their societies. British human rights law because it avoids messy public debates about who is British or not really British by opening schools to all students regardless of their background. The advantage of this openness is an encouragement of society on all levels to accept and be open to cultural (and religious) differences. Policymakers who find their countries approach the same social, economic, and political conditions as the High Risk countries should look to British human rights law as a progressive alternative European model for multicultural integration.
REFERENCES


